

**Calendar No. 630**

110TH CONGRESS }  
2d Session

SENATE

{ REPORT  
110-278

TEN-IN-TEN FUEL ECONOMY ACT

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 357



APRIL 7, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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### TEN-IN-TEN FUEL ECONOMY ACT

APRIL 7, 2008.—Ordered to be printed

Mr. INOUE, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 357]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 357) to improve passenger automobile fuel economy and safety, reduce greenhouse gas emissions, reduce dependence on foreign oil, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

S. 357, as amended, would increase fuel economy for passenger cars and light, medium, and heavy duty trucks. It also would provide civil and criminal penalties for gasoline price gouging during an energy emergency period declared by the President. Title I of S. 357 would reform and increase fuel economy standards for automobiles (passenger cars and light trucks) under 10,000 pounds gross vehicle weight ratio (gvwr). The bill would change the current Corporate Average Fuel Economy (CAFE) program to allow the fuel economy standards of all automobile classes (passenger cars and light trucks) covered by S. 357 to be combined into one overall national average. The bill also would create fuel economy standards for medium duty trucks (10,000 pounds through 26,000 pounds gvwr) and heavy duty trucks (over 26,000 pounds gvwr) for the first time. Starting in model year (MY) 2011, automobiles must ratably achieve an overall national fuel economy standard of 35 miles per gallon (mpg) by MY 2020. After MY 2020, automobile fuel economy must increase by 4 percent over the previous model year until 2030. Medium duty and heavy duty (MHD) trucks, after the pro-

mulgation of the first fuel economy standards for these vehicles, must also achieve a 4 percent per annum improvement in fuel economy until 2030. The Secretary of Transportation (Secretary) would have the discretion to lower the fuel economy standards in any given year if certain conditions are met.

Title II of S. 357 would make it illegal to sell oil, gasoline, or petroleum distillates at “unconscionably excessive” prices when the President declares an energy emergency. The bill would prohibit anyone from reporting false information to the government about the wholesale prices of these products, and the legislation would make the manipulation of petroleum markets in violation of Federal Trade Commission (FTC) rules illegal.

## BACKGROUND AND NEEDS

### HISTORY OF CAFE

CAFE refers to the Federal policy that requires automobile manufacturers to meet an average fleet-wide fuel economy standard on an annual basis. The purpose of the law is to reduce fuel consumption, which in turn benefits the United States by: (1) protecting the Nation’s national security by reducing its dependence on foreign oil; (2) reducing gasoline costs for consumers; and (3) protecting the environment by reducing toxic air emissions and carbon dioxide emissions, which contribute to problems such as global warming.

CAFE standards were first enacted in 1975 as part of the Energy Policy and Conservation Act (P.L. 94–163). One of the first CAFE bills to be introduced was S. 633 in the 94th Congress, which was referred to the Senate Committee on Commerce, Science, and Transportation. The provisions of that bill were incorporated into a larger conservation bill (S. 622) considered by the Interior Committee, which became the measure that was enacted into law. The CAFE measure arose out of concern for the Nation’s energy security following the oil crisis of the early 1970s, which was precipitated by the Arab oil embargo of 1973–1974. The crisis exposed the economic vulnerability of the United States and its heavy dependence on foreign oil. As a result, policymakers decided to take action to reduce this dependence. Given the large degree of petroleum dedicated to transportation fuel use, particularly in passenger automobiles, it was determined that priority should be given to reducing transportation fuel consumption. Congress was advised that by decreasing the amount of fuel use over vehicular miles driven, the Nation could achieve substantial savings in oil use.

### STRUCTURE AND REQUIREMENTS OF CAFE

The Department of Transportation (DOT) via the National Highway Traffic Safety Administration (NHTSA) administers the CAFE program. The CAFE law required automobile manufacturers, with respect to passenger cars and light trucks, for the first time, to meet specific fuel economy standards. Passenger cars were required to meet specific numerical levels incrementally as provided for in the statute. However, the standards for light trucks were left to the discretion of the NHTSA. This differentiation was due to the fact that light trucks were rarely used as passenger vehicles at the time. To illustrate, in 1975, light trucks accounted for approximately 15 percent of the U.S. automobile market.

Adherence to CAFE standards is determined by averaging separately the fuel economy of a manufacturer's entire car and light truck fleets. The passenger car fleet is further subdivided into a domestic car and a foreign car fleet. A domestic car is one in which 75 percent of its content value is from the United States, Canada, or Mexico. If the value of the domestic components is less than 75 percent, a car is considered a foreign car. The domestic and foreign car fleets must independently meet the passenger car CAFE standard. As it stands today, the CAFE fleet-wide requirement for passenger cars is 27.5 mpg, and 22.2 mpg for light trucks. Manufacturers that fail to meet these requirements are subject to civil penalties of \$5.50 per car in their fleet for every 0.1 mpg below the standard. Makers of expensive car lines, such as BMW and Porsche, often fail to comply. From 1983 through 1995, more than \$400 million in fines were collected due to CAFE noncompliance.

#### CURRENT PASSENGER CAR STANDARDS

The 1975 law was directed at passenger cars. Under the statute, passenger vehicles were required to meet higher fuel economy standards incrementally over a seven year period (1978–1985). When the law was enacted in 1975, the average mpg for passenger cars was between 13 and 14 mpg. It was recognized, however, that consumers were demanding smaller and more fuel efficient cars in response to gas shortages and high prices and that the technologies existed to achieve fuel economy improvements over time. With a three year lead time provided before the first requirements went into effect, automobile manufacturers were required to ensure their passenger car fleets complied with the following schedule:

- 1978—18.0
- 1979—19.0
- 1980—20.0
- 1981—22.0
- 1982—24.0
- 1983—26.0
- 1984—27.0
- 1985—27.5

Since leveling off in 1985, however, CAFE standards for passenger cars have not improved. In fact, during the Reagan and first Bush Administrations, the passenger car standards were actually decreased by the NHTSA to 26.0 mpg for years 1986–1988, and slightly increased to 26.5 for 1989. The standard returned to 27.5 in 1990 and has remained there to present day.

#### CURRENT LIGHT TRUCK STANDARDS

The CAFE standard for light trucks was 20.7 mpg from 1996 until 2003. In 2003, the NHTSA issued a final rule which raised the CAFE standard for light trucks. The rule set standards at 21.0 mpg for MY 2005, 21.6 mpg for MY 2006, and 22.2 for MY 2007.

#### *2006 light truck standard reform*

A new light truck standard was put into place by the NHTSA on March 29, 2006. The new standard is based on the “footprint” of the light truck. The footprint is the average track width (the distance between the centerline of the tires) and wheelbase (the dis-

tance between the centers of the axles). Each footprint value has a different target, and footprint value is the same for all manufacturers, regardless of differences in their overall fleet mixes. A target level of fuel economy is established for each one-tenth of a square foot increment in a vehicle's footprint. This results in what is known as the "continuous curve." Each vehicle model will essentially have its own CAFE standard. As long as all models in a manufacturer's fleet meet the harmonically averaged CAFE standard, it will be compliant with the law.

Manufacturers may comply with CAFE standards established under the reformed structure or with standards established by the current CAFE rule during the transition period (MYs 2008–2010). In MY 2011, all manufacturers will be required to comply with the reformed CAFE standard.

If manufacturers choose to follow the current CAFE regime, the average light truck fleet standards are as follows:

- MY 2008: 22.5 mpg
- MY 2009: 23.1 mpg
- MY 2010: 23.5 mpg

The NHTSA estimates that average CAFE levels required for all manufacturers will be 24 mpg in MY 2011. The NHTSA claims the new fuel economy standards for light trucks will save 10.7 billion gallons of fuel over the next two decades.

Several experts noted that the rule does not include trucks that weigh between 8,500–10,000 lbs, such as the Hummer H2, until 2011. The rule has been criticized for potentially low fuel savings. According to the Union of Concerned Scientists, the new light truck standard will save less than two weeks of gasoline each year over the next two decades.

#### CAFE SUCCESSES

Between 1975 and 1985, the CAFE program achieved the goals for which it was intended. In 1974, the average car sold in America achieved 13 mpg. By 1988, fuel economy climbed to a peak of almost 29 mpg, a 120 percent increase in fuel economy over 14 years. Light truck standards (including SUVs and minivans) led to a fuel economy increase of 50 percent, from 13.7 mpg in 1975 to 20.7 mpg in 1987. Improvements in vehicle design between 1975 and 1985 improved fuel economy by an average of 62 percent for all vehicles. The National Research Council of the National Academy of Sciences (NRC) in its 2002 report on CAFE estimated that absent fuel economy improvements created by the CAFE program, U.S. gasoline use would be 2.8 million barrels per day (or 43 billion gallons per year) higher than it is today. As a result, fuel use by cars and light trucks today is roughly one-third lower than it would otherwise be and overall oil consumption is 5 percent lower. In addition, carbon dioxide emissions would be more than 100 million metric tons higher each year than they are now without the CAFE program. Because of CAFE, carbon dioxide emissions have been cut by seven percent.

#### EROSION OF THE CAFE STANDARD AND FUEL ECONOMY PERFORMANCE

The NRC found that the CAFE program contributed to the increased fuel economy of the fleet and has been particularly effective

in keeping fuel economy above the levels to which it might have fallen during times of low real gasoline prices, thus shielding consumers from the volatility of oil prices. But after doubling fuel economy in the first 15 years of the program, the fuel economy of passenger cars has stagnated at 27.5 mpg. Light truck fuel economy was frozen from 1995 until 2003 at 20.7 mpg, before a new rule increasing the standards began in 2003. In 1987, the combined fuel economy average for passenger cars and light trucks was 26.2 mpg. Currently, the average is 24.6 mpg. In 1975, light trucks were 15 percent of the fleet; today they are over 50 percent of the fleet. In addition to the fleet composition, several experts point to the diversion of fuel economy technologies to improve comfort and power as the key to the eroding fuel economy of the fleet. Advanced technologies that could have been used to continue to increase fuel economy were used for other attributes instead. Thus, fuel economy essentially was held steady after 1985, but efficiency technology was used to increase vehicle weight by 20 percent and make 0–60 acceleration times, on average, 25 percent faster.

#### CURRENT LEVELS OF OIL DEPENDENCY

The transportation sector consumes 67 percent of all oil in the United States. Automobiles alone account for approximately 30 percent of U.S. petroleum consumption. Imports of foreign oil accounted for over 65 percent of U.S. consumption. In 1975, when Congress passed CAFE out of concern about the use of oil as a “political weapon,” imports accounted for about one-third of U.S. oil consumption. The growing unrest in regions of the world upon which we rely for our oil imports increases the risk of future oil shocks that will have substantial adverse impacts on the U.S. economy as well as on consumers.

#### STATUS OF THE CAFE PROGRAM

The CAFE program has faced many political and structural hurdles since its creation in 1975, but the last 10 years have been especially detrimental to its ability to encourage fuel economy in the passenger fleet. The CAFE program was not funded from fiscal year (FY) 1996 to FY 2001 because of riders included in appropriations bills. CAFE standards for passenger cars have stayed the same for more than 20 years. CAFE standards for light trucks were not addressed from 1996 to 2002, and many Members of Congress have strongly criticized the increases for light trucks that began in 2003, noting that the standards were set too low and did not reflect the technologies available for improving fuel economy.

President George W. Bush requested the authority from Congress to reform passenger car CAFE in his 2007 State of the Union Address. He also stated that he would make it a goal to have CAFE standards increase by four percent annually, but he would not mandate the NHTSA to create a standard of that magnitude.

Members are concerned that the President’s request to reform passenger car CAFE without Congressional guidance would lead to an unsatisfactory passenger car CAFE standard, akin to the light truck standard. The NHTSA undertook reforms of the light truck CAFE program, which are now a part of the light truck standard for MY 2008–2011. The NHTSA stated that the reformed standard would save 10.7 billion gallons of fuel over the useful life of the MY

2008–2011 light trucks. Numerous experts have denounced the rule, noting that the standards would save less than two weeks of current gasoline consumption each year over the next two decades.

#### GASOLINE PRICE GOUGING

Immediately following Hurricane Katrina in 2005, gas prices in some areas reached over \$6 per gallon without any perceived connections to actual commodity prices at that time. Spurred by consumer complaints in the affected markets, State officials began to investigate suspicions of gas pump profiteering. These State officials used State price gouging laws as the foundation for these inquiries and investigations. Most of these laws are enforced after the declaration of an emergency, but some are enforced at other times. Some States also used their consumer protection laws to prosecute price gouging as an unfair and deceptive trade practice. Generally, most price gouging laws make it illegal to sell goods and services in a designated emergency area at prices that exceed the normal prices for comparable goods and services in the same area immediately before the declaration of an emergency. There are several standards of proof States have used to evaluate whether gouging has occurred. States have set the burden at a “gross disparity” between the prices of the good or service before the emergency and after the emergency that cannot be accounted for in the wholesale price, transportation cost, or other externality that a retailer did not control. Some States have set a percentage increase as the trigger for an investigation. Alabama, for example, set its trigger at an increase of greater than 25 percent of the pre-emergency price.

The FTC currently does not have specific authority to prosecute gasoline price gouging. However, the FTC does have authority to police the oil and gas industry for anti-competitive behavior via merger reviews and activities that violate the Sherman and Clayton Acts. Many observers have raised concerns that oil and gas industry activities have artificially increased prices without violating the Sherman and the Clayton Acts.

The FTC undertook a congressionally-mandated examination of the post Katrina gasoline markets to find if gasoline price gouging had occurred. Senate Amendment 1703 to H.R. 2862, the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006 required the FTC to conduct an immediate investigation into nationwide gasoline prices in the aftermath of Hurricane Katrina. The FTC was required to issue its investigative report to the Senate Committee on Commerce, Science, and Transportation, the House Committee on Energy and Commerce, and the House and Senate Appropriations Committees within 180 days of enactment. The amendment was accepted by unanimous consent, and H.R. 2862 was signed into law by President Bush on November 22, 2005 (P.L. 109–108). The report was delivered on May 22, 2006.

In its report, the FTC found no evidence that the oil industry manipulated gasoline prices in the wake of hurricanes Katrina and Rita and that the 15 instances that fit the definition of price gouging created by Congress could be explained by market conditions. But in a concurrence by FTC Commissioner Jon Liebowitz, he noted that a handful of refiners studied by the Commission for the report had “more than doubled their operating margins in ways



not attributable to increased costs,” that other refiners’ wide margins were “equally troubling,” and that “the behavior of many market participants, on balance, leaves much to be desired.”

#### SUMMARY OF PROVISIONS

S. 357, the Ten-in-Ten Fuel Economy Act of 2007, would reform and increase fuel economy standards for automobiles (passenger cars and light trucks) under 10,000 pounds gvwr. The bill would change the current CAFE program to allow the fuel economy standards for all automobile classes covered by S. 357 to be combined into one overall national average. Beginning in MY 2011, the overall automobile fuel economy average would be ratably increased in order to achieve a fuel economy standard of at least 35 mpg by MY 2020. After MY 2020, the fuel economy average would be increased at four percent more than the previous model year. This level of increase would continue until MY 2030. The Secretary would have the discretion to lower the rate of change for automobile fuel economy standards if the Secretary finds certain conditions that justify the usage of that discretion. From MY 2011 to MY 2020, the Secretary could lower the rate of increase for a fuel economy standard for a particular year if the maximum feasible fuel economy level is lower than the ratable level of change to achieve the 35 mpg standard in MY 2020. From MY 2021 to MY 2030, the Secretary could lower the rate of increase if it is found that the four percent increase is not cost effective for that model year.

S. 357 also would create and increase fuel economy standards for medium duty and heavy duty trucks. After the initial baseline fuel economy standard is promulgated for medium duty and heavy duty trucks, the fuel economy for these trucks shall increase by four percent over the previous model year until MY 2030. The Secretary may lower the rate of increase if it is found that the 4 percent increase is not cost effective for that model year.

The bill would require the Secretary to initiate a rulemaking in 2010 to issue standards to mitigate the difference in weight and size between the largest and smallest vehicles, and to improve bumper height compatibility between vehicles. The final rule must be issued in 2012.

The Secretary may establish, by regulation, a fuel economy credit trading program to allow manufacturers whose automobiles exceed the average fuel economy standards to earn credits to be sold to manufacturers whose automobiles fail to achieve the prescribed standards. Automakers may carry forward or back earned fuel economy credits for five years as opposed to the three years as currently permitted.

S. 357 would create two labeling programs to aid consumer choice in purchasing vehicles with better fuel economy and greenhouse gas emissions. The green label for vehicles are for those that meet or exceed the applicable fuel economy standard or have the lowest greenhouse gas emissions over the useful life of the vehicle. The gold star label would be for automobiles that achieve a fuel economy of 50 mpg.

S. 357 would make it illegal to sell oil, gasoline, or petroleum distillates at “unconscionably excessive” prices when the President declares an energy emergency. Additionally, S. 357 would prohibit anyone from reporting false information to the government about

the wholesale prices of these products and would make it illegal to manipulate petroleum markets in violation of FTC rules. Those found to have committed market manipulation would be subject to civil fines of up to \$1 million, and those who are found to have committed price gouging during an energy emergency would be liable for civil and criminal penalties up to \$5 million and five years imprisonment.

#### LEGISLATIVE HISTORY

On January 22, 2007, Senators Dianne Feinstein and Olympia Snowe introduced S. 357, which was referred to the Committee on Commerce, Science, and Transportation. Several members of the Committee cosponsored the measure, including Chairman Inouye and Senators Kerry, Boxer, Bill Nelson, Cantwell, and Lautenberg. Vice Chairman Stevens cosponsored S. 357, as reported.

On March 6, 2007, and May 3, 2007, the Committee held hearings chaired by Consumer Affairs Subcommittee Chairman Pryor and Chairman Inouye, respectively, that examined increasing CAFE standards and evaluated pending CAFE legislation. Among those that testified before the Committee were individual automobile manufacturers and their trade associations, environmental groups, vehicle technology experts, the United Auto Workers, the NHTSA, and national defense and energy experts.

On May 8, 2007, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 357 offered by Chairman Inouye and Vice Chairman Stevens that made several substantive changes to the bill as introduced. In addition to the substitute, the Chairman and the Vice Chairman offered a package of technical amendments to clarify and correct portions of the substitute. Senator Boxer offered an amendment to improve the fuel efficiency of the Federal fleet. Senators Cantwell, Dorgan, Klobuchar, and Kerry offered an amendment to increase the number of flexible fuel vehicles that automobile manufacturers produce. Senator Cantwell offered an amendment to have the Environmental Protection Agency (EPA) review the accuracy of fuel economy labels every 5 years. Senator Cantwell offered an amendment to create a national tire fuel efficiency program and a tire fuel efficiency rating system. Senator Carper offered an amendment to create an Advanced Battery Initiative to support and improve battery technology. Senator Carper also offered an amendment to create national biodiesel fuel standards. Senator Dorgan offered a process to promulgate the initial medium duty and heavy duty truck fuel economy standards. Senator Dorgan also offered an amendment to end the fuel economy program under S. 357 at MY 2030 for automobiles and medium and heavy duty trucks. Senator Lautenberg offered an amendment to mandate that the Secretary report to Congress when fuel economy standards are lowered and to outline the steps needed to avoid future decreases. Senators Pryor and Thune offered an amendment to use collected CAFE fines for vehicle fuel efficiency research and to increase alternative fuel infrastructure. All of these amendments to the Inouye-Stevens substitute amendment were accepted en bloc. Senator Cantwell offered the language of S. 1263, the Petroleum Consumer Price Gouging Protection Act, as amendment outside of the en bloc amendment package. Senator Cantwell's amendment was accepted by voice

vote. The Committee adopted the Inouye-Stevens substitute amendment to the bill by voice vote and ordered the bill reported favorably, as amended.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

##### *S. 357—Ten-in-Ten Fuel Economy Act*

Summary: S. 357 would increase fuel economy standards for passenger automobiles and light, medium, and heavy trucks starting in 2011, and would require the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) to promulgate rules and regulations to implement the increased standards. The bill also would require those agencies to submit several reports to the Congress concerning fuel economy. Further, the legislation would authorize appropriations for the Department of Energy (DOE) to provide grants for the installation of equipment to deliver alternative fuels to consumers and would authorize programs to research technologies to conserve motor fuel and to increase consumer awareness of fuel economy. Based on information from the affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 357 would cost \$11 million in 2008 and \$149 million over the 2008–2012 period.

CBO estimates that enacting S. 357 would lead to reduced use of motor fuels starting in 2011, thereby reducing revenues from the federal excise taxes on motor fuels. CBO estimates that revenues would decline under the bill by \$72 million over the 2011–2012 period and by about \$3.1 billion over the 2011–2017 period. Enacting S. 357 would not have a significant impact on direct spending.

Pursuant to section 203 of S. Con. Res. 21, the Concurrent Resolution on the Budget for Fiscal Year 2008, CBO estimates, that under S. 357, revenues would be reduced by at least \$5 billion and as a result, deficits would be increased by at least \$5 billion in at least one of the four 10-year periods beginning in 2018 through 2057.

S. 357 would preempt state and local authority to implement their own consumer information laws or regulations on the fuel efficiency impact of vehicle tires; that preemption constitutes an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that the preemption would impose insignificant additional costs on state, local, or tribal governments that would be well below the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation).

S. 357 would impose several private-sector mandates as defined in UMRA, on vehicle and tire manufacturers, as well as suppliers of crude oil, gas, or petroleum distillates. The bill would set new corporate average fuel economy standards for automobiles and certain trucks and impose new safety standards and labeling requirements on manufacturers of those vehicles. The bill also would impose new requirements related to consumer information on manufacturers and retailers of motor vehicle tires. In addition, the bill would prohibit certain pricing practices during a declared energy

emergency. The aggregate costs of the mandates in the bill is uncertain because such costs would depend on regulations to be developed under the bill. However, because the cost of the fuel economy standards could be large, CBO expects that the aggregate cost of mandates would likely exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government; The estimated budgetary impact of S. 357 is summarized in Table 1. The costs of this legislation fall within budget functions 270 (energy), 300 (natural resources and environment), 400 (transportation), and 800 (general government).

Basis of estimate: For this estimate, CBO assumes that S. 357 will be enacted by the end of fiscal year 2007 and that the necessary amounts will be appropriated each year. Estimates of spending are based on historical spending patterns of similar and ongoing programs.

S. 357 would increase fuel economy standards for passenger automobiles and light, medium, and heavy trucks starting in 2011, and would require DOT, DOE, and EPA to promulgate rules, regulations, and standards and to submit several reports to the Congress concerning fuel economy standards and implementation of the fuel-efficiency requirements of the bill. The bill also would authorize additional programs to increase the availability and consumer awareness of vehicles that operate on alternative fuels and of such fuels.

TABLE 1.—CHANGES IN REVENUES AND SPENDING SUBJECT TO APPROPRIATION UNDER S. 357

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Changes In Revenues <sup>1</sup>					
Estimated Revenues .....	0	0	0	–17	–55
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Implement CAFE Standards:					
Authorization Level .....	0	25	25	25	25
Estimated Outlays .....	0	15	21	24	25
Energy Security Fund:					
Estimated Authorization Level .....	8	6	7	7	2
Estimated Outlays .....	6	6	7	7	3
Public Awareness Programs:					
Estimated Authorization Level .....	5	5	5	5	5
Estimated Outlays .....	3	5	5	5	5
Grants for Advanced Battery Research:					
Estimated Authorization Level .....	1	1	1	1	1
Estimated Outlays .....	1	1	1	1	1
Other Programs:					
Authorization Level .....	2	1	1	1	1
Estimated Outlays .....	1	2	1	1	1
Total Changes:					
Estimated Authorization Level .....	16	38	39	39	34
Estimated Outlays .....	11	29	35	39	35

NOTE: CAFE = corporate average fuel economy.

<sup>1</sup> Changes in revenues through 2017 are shown in Table 2.

### Revenues

The Secretary of Transportation is currently authorized to set corporate average fuel economy (CAFE) standards for passenger

automobiles and light trucks sold in the United States. S. 357 would amend those standards in a number of ways designed to increase fuel economy. The Secretary of Transportation would set standards for passenger automobiles and light trucks beginning in 2011 to achieve a combined fuel economy by 2020 of at least 35 miles per gallon, unless it was determined that a higher standard was not cost-effective. Separate treatment of passenger automobiles and light trucks would end, although a system of different standards for vehicles with different attributes could be established, such as is currently being implemented for light trucks. S. 357 would include under the new standards those types of light trucks currently exempt from CAFE standards. In addition, a fuel economy standard would apply to medium- and heavy-duty trucks for the first time and would be separate from that covering passenger automobiles and light trucks. Among other provisions, S. 357 would authorize the Secretary of Transportation to establish a program for trading credits between firms.

The estimated changes in revenues under S. 357 are shown in Table 2. Combining the effects of the reduced motor fuel excises and penalties, CBO expects that total revenues would be reduced by \$72 million over the period from 2011 to 2012 and by about \$3.1 billion from 2011 through 2017, net of income and payroll tax effects.

TABLE 2.—CHANGES IN REVENUES OVER THE 2008–2017 PERIOD UNDER S. 357

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN REVENUES												
Estimated Revenues ...	0	0	0	–17	–55	–150	–309	–536	–835	–1,214	–72	–3,116

**Fuel Economy Standards.** Based on information provided by the National Highway Traffic Safety Administration (NHTSA) within the Department of Transportation, CBO assumes that new, higher standards would be put in place starting in 2011 without a determination that they fail a cost-effectiveness test. S.357 specifies that the composite standard for passenger automobiles and light trucks be adjusted starting in 2011 to the maximum feasible level to achieve a fuel economy for the U.S. fleet of at least 35 miles per gallon in 2020. To reach 35 miles per gallon by 2020, CBO expects that, beginning in 2011, the standards would be increased gradually from their levels under current law for 2010, which are 27.5 miles per gallon for passenger automobiles and about 23.5 miles per gallon for light trucks, or a composite of more than 25 miles per gallon. As a result, CBO estimates that the composite fuel economy standard for passenger automobiles and light trucks would rise by more than 3 percent per year and, by 2017, would reach about 32 miles per gallon—between 6 and 7 miles per gallon higher than the composite standard in 2017 expected under current law. (By 2020, the composite fuel economy standard would be almost 10 miles per gallon higher.)

CBO also assumes that new standards for medium- and heavy-duty trucks would begin in 2013, following a required study and an implementation period set by the bill. Those standards would in-

crease by 4 percent per year under S. 357. In addition, CBO expects that a system of trading of credits would be established, allowing firms whose fleets are above the standard to sell credits they earn to firms whose fleets are below the standard and would otherwise be subject to monetary penalties. (Under current law, such credits can only be used by a manufacturer to offset its own potential penalties in other years.) Considerable uncertainty exists, however, about how such a system would be structured and how the market would function.

In estimating the effects of S. 357, CBO assumes that the baseline against which the policy is measured does not incorporate any future changes to the program by the Secretary of Transportation. Potential changes to the system that can be accomplished without legislative action—such as are currently being studied as a part of an Executive Order to study ways to reduce greenhouse gas emissions from motor vehicles—are too indefinite to incorporate into the baseline.

CBO expects that the new CAFE standards brought about by S. 357 would reduce use of motor fuels, which in turn would reduce revenues from excise taxes on motor fuels. Under current law, gasoline is taxed by the federal government at a rate of 18.4 cents per gallon and diesel fuel is taxed at a rate of 24.4 cents per gallon. Blends of gasoline and ethanol effectively are taxed at lower rates through 2010. CBO estimates that enacting S. 357 would cause excise tax revenues to decline by \$17 million in 2011, about \$46 million in 2012, and by amounts increasing to about \$1.2 billion by 2017, net of income and payroll tax effects. In 2017, CBO expects savings in motor fuel use of roughly 8 billion gallons—or between 3.5 percent and 4 percent of total motor fuel use expected under the current-law baseline.

The estimated revenue losses would rise rapidly between 2011 and 2017 for several reasons. First, the new standards would be continually increased over a period of time, starting in 2011 for passenger automobiles and light trucks and later for medium- and heavy-duty trucks. Second, the vehicle fleet is replaced over a period of years as individuals gradually retire old vehicles and purchase new ones. Over time, an increasing share of the vehicle stock would be produced under the new standards, and motor fuel savings would accumulate. Third, some firms would not find the higher standards to be binding immediately because their fleets would already exceed those standards under current law. Some firms already produce fleets with fuel economy several miles per gallon above the current standards. Because of recent price increases for motor fuels, other firms that until recently produced vehicles with fuel economy at or just above the standards are expected under current law to produce vehicles with higher fuel economy. As the standards steadily rise under S. 357, an increasing share of manufacturers would find the standards to be binding. Finally, firms with fleet fuel economy above the new standard would initially earn credits that they could sell to firms with higher costs of complying with the new standard, which would hold down increases in fuel economy by those who purchase the credits. However, fewer firms would generate credits over time as the standard increases.

**Credit Trading Program and CAFE Penalties.** CBO also expects that the establishment of a credit trading program would reduce

penalties currently collected for violations of the CAFE standards. CBO expects that penalties under current law would be between \$10 million and \$20 million per year through 2017. With a credit trading program projected to start around 2011, CBO expects that enough credits would be generated and sold to noncompliant firms such that penalties would be reduced substantially in 2012 and become negligible from 2013 through 2017. As a result, revenues from penalties would decline by \$9 million in 2012 and \$73 million over the 2012–2017 period, net of income and payroll tax effects, CBO estimates.

**Civil and Criminal Penalties.** S. 357 would expand the scope of the FTC’s enforcement authorities by treating price gouging for petroleum products as a violation of rules regarding unfair or deceptive acts or practices. The FTC would be authorized to enforce new standards that would be subject to both criminal and civil penalties for any violations. Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

Further, the bill would establish new civil penalties for tire manufacturers that do not comply with certain regulations established by DOT. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded as revenues and deposited in the Treasury; however, CBO expects that any increase in revenues related to those penalties would not be significant.

#### *Spending subject to appropriation*

CBO estimates that implementing S. 357 would cost \$149 million over the 2008–2012 period, subject to appropriation of the necessary amounts.

**Implementation of CAFE Standards.** S. 357 would expand the authority of DOT to set CAFE standards starting in 2011. The bill would authorize the appropriation of \$25 million annually, starting in 2009, to implement fuel economy standards. The authorization of appropriations includes funds to expand the CAFE program to medium- and heavy-duty trucks, to issue rules and regulations regarding the expanded program, to institute a program that would allow companies to obtain credits for exceeding CAFE standards, and to trade such credits with other companies that do not meet the annual standards. The authorization also would allow DOT to complete studies required by the bill relating to fuel economy standards.

Based on information from DOT and assuming appropriation of the specified amounts, CBO estimates that implementing those provisions would cost \$15 million in 2009 and \$85 million over the 2009–2012 period.

**Energy Security Fund.** Under S. 357, one-half of the penalties collected each year for automakers’ violations of CAFE standards would be authorized to be appropriated to DOE for a grant program to support the installation of equipment at gas stations to deliver alternative motor fuels. Based on historical spending patterns for similar grant programs administered by DOE, CBO estimates

that this provision would cost \$6 million in 2008 and \$29 million over the 2008–2012 period. Those estimates are based on CBO’s projections of CAFE penalties that would result under S. 357. After 2012, CBO estimates such penalties would not be significant because of the opportunity that firms would have under the bill to purchase CAFE credits and avoid paying federal penalties.

**Public Awareness Programs.** Based on rules promulgated by DOT, the bill would require manufacturers of automobiles and tires to provide consumers with information about the fuel efficiency of their products and, in the case of automobile manufacturers, to provide information about the use of alternative fuels in their vehicles. The bill also would require NHTSA to create a fuel-efficiency rating system for tires and set uniform testing procedures for tire manufacturers to rate the fuel efficiency of their products. Further, through a labeling and consumer education program, the bill would require DOT and EPA to increase the public’s awareness of the fuel efficiency and the greenhouse gas emissions of individual vehicles. Based on information from those agencies and assuming appropriation of the necessary amounts, CBO estimates that these activities would cost \$3 million in 2008 and \$23 million over the 2008–2012 period.

**Grants for Advanced Battery Research.** The bill would require DOT to administer a grant program to support research, development, demonstration, and commercial application of electric battery technologies and to establish a council of industry advisors. Under current law, DOE administers a similar program that costs about \$10 million annually. CBO expects that the grants authorized in the bill would likely augment the program as administered by DOE. Assuming appropriation of the necessary amounts, CBO estimates that the grant program would cost \$1 million annually.

**Other Provisions.** The bill would require DOT to establish rules mandating that at least 50 percent of vehicles sold in 2012 and 80 percent sold in 2015 be able to operate on both gasoline and another fuel, such as diesel. The bill also would require the General Services Administration (GSA) to submit a report to the Congress about the fuel efficiency of automobiles purchased by federal agencies and would require the executive branch to establish and enforce standards for biodiesel fuel sold in the United States. Title II would require the FTC to develop and enforce rules that would prohibit suppliers from selling oil, gas, or other petroleum distillates at excessively high prices during certain emergencies declared by the President. Based on information from the agencies involved, CBO estimates that those provisions would cost \$1 million in 2008 and \$6 million over the 2008–2012 period.

**Mileage Improvement for the Federal Vehicle Fleet.** The General Services Administration purchases around 60,000 new vehicles annually for most government agencies for the federal government’s use. By increasing CAFE standards starting in 2011, the federal government could realize some cost savings under the bill from reducing gasoline purchases if the vehicles it purchases achieve greater gasoline mileage. Vehicles with improved fuel efficiency are likely to be more expensive to purchase. Consequently, CBO expects that any net savings or costs in vehicle acquisition and operating costs would not be significant over the next five years.



Estimated impact on state, local, and tribal governments: S. 357 would preempt state and local authority to implement their own consumer information laws or regulations on the fuel efficiency of tires; that preemption constitutes an intergovernmental mandate as defined in UMRA. CBO estimates, however, that the preemption would impose insignificant additional costs on state, local, or tribal governments that would be well below the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation). The bill could also benefit public institutions of higher education through a grant program for research on the commercial application of batteries. States also would be authorized to take civil action based on a provision of the bill that prohibits price gouging during an energy emergency. Any costs public entities might incur as a result of those provisions would be incurred voluntarily.

Estimated impact on the private sector: S. 357 contains several private-sector mandates as defined in UMRA on vehicle and tire manufacturers, as well as suppliers of crude oil, gas, or petroleum distillates. The bill would set new corporate average fuel economy standards for automobiles and certain trucks and impose new safety standards and labeling requirements on manufacturers of those vehicles; impose new requirements related to consumer information on manufacturers and retailers of motor vehicle tires; and prohibit certain pricing practices during a declared energy emergency. The aggregate cost of the mandates in the bill is uncertain because that cost would depend on regulations to be developed under the bill. However, because the cost of new fuel economy standards could be large, CBO expects that the aggregate cost would likely exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

#### *Fuel economy standards*

Section 102 would require the Secretary of Transportation to prescribe average fuel economy standards for automobiles, medium-duty and heavy-duty trucks beginning with model year 2011. CBO cannot estimate the cost of the mandates in this section of the bill because the scope and timing of the requirements would depend on regulations to be developed by DOT. However, the cost of the mandate on car manufacturers would only have to average around \$12 per vehicle for it to exceed UMRA's annual threshold. According to studies by the National Research Council and the Department of Energy on various policies that would increase the CAFE standards, the average cost per vehicle would likely be greater than that amount. Consequently, the cost of these mandates would likely exceed the threshold in at least one of the first five years that the mandates are in effect.

#### *Additional requirements on manufacturers of motor vehicles*

The bill would impose numerous mandates on automobile manufacturers addressing motor vehicle safety, fuel-use capabilities, and labeling. The costs of most of those mandates cannot be determined because they would depend on future rulemaking. The bill would:

- Direct the Secretary of Transportation to issue a motor vehicle safety standard to reduce vehicle incompatibility and

aggressivity between passenger vehicles and nonpassenger vehicles;

- Require each automobile manufacturer to produce a certain number of flexible fuel vehicles each year;
- Require that the fuel economy label attached to passenger automobiles also include information about the environmental consequences of greenhouse gas and other emissions; and
- Direct the Secretary of Transportation to prescribe regulations that would require automobile manufacturers to provide certain information about their vehicles' capability of operating on alternative fuel and to display a permanent badge or emblem on the tailgate of each vehicle that indicates that the vehicle is capable of operating on alternative fuel.

*Consumer information on tire fuel efficiency*

The bill would require the Secretary of Transportation to develop rules establishing a national program for consumer information on the effect of tires on the fuel efficiency of motor vehicles. Some of the rules would include requirements for providing information to customers at the point of sale and on the internet and specifications for test methods for manufacturers to use in assessing and rating tires. Based on information from industry sources, the cost of this mandate would not be substantial relative to the UMRA's annual threshold for private-sector mandates.

*Additional requirements on certain oil and gas suppliers*

The bill would prohibit certain oil and gas suppliers from selling or offering to sell crude oil, gasoline, or other fuel derived from petroleum for an excessive price (as defined in the bill) in a geographic location where the President has declared an energy emergency. CBO cannot estimate the cost of this mandate for several reasons. First, there is uncertainty about the conditions under which the President would declare an energy emergency. Second, there are uncertainties about how the FTC and a state attorney general would interpret the bill's definition of an excessive price. Finally, it is not clear to what extent suppliers would forgo business opportunities under the bill or what the value of those lost opportunities would be.

Estimate prepared by: Federal spending: Sarah Puro (for DOT), Megan Carroll (for DOE), Susan Willie (for FTC), and Matthew Pickford (for government-owned vehicles); Federal revenues: Mark Booth and Emily Schlect; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Fatimot Ladipo.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

## NUMBER OF PERSONS COVERED

The fuel economy standards in title I of the legislation would apply to each automobile and medium and heavy duty truck manufacturer that sells automobiles and trucks in the United States. The Price Gouging Protection Act in title II would apply to every person engaged in the trade or business of distributing, selling, or reselling, at the retail or wholesale level, crude oil, gasoline, or petroleum distillates within FTC enforcement jurisdiction.

## ECONOMIC IMPACT

Title I of S. 357 would require covered manufacturers to improve fuel economy to the prescribed levels or incur CAFE fines. To improve fuel economy, it would be expected that the manufacturers would have to integrate new fuel economy technologies and in some instances redesign product lines to assure compliance. Title II would deter suppliers from charging unconscionably excessive prices during declared energy emergencies, but normal levels of profit taking, in line with the delineated costs to the suppliers, would not be impacted.

## PRIVACY

S. 357 would have no anticipated impact on the privacy of individuals.

## PAPERWORK

The legislation would increase paperwork requirements for the impacted private industries that have to work with the Secretary to prove compliance with title I. In general, there will not be an increase in paperwork for suppliers impacted by title II. The FTC or a State Attorney General may require increased paperwork as a result of an enforcement action.

## SECTION-BY-SECTION ANALYSIS

## TITLE I—CORPORATE AVERAGE FUEL ECONOMY STANDARDS

*Section 101. Short title; Table of contents*

This section would provide the title. Title I may be cited as the “Ten-in-Ten Fuel Economy Act.”

*Section 102. Average fuel economy standards for automobiles, medium duty trucks, and heavy duty trucks*

This section would set forth the process to increase fuel economy standards for passenger cars and light trucks up to 10,000 pounds gvwr (defined together as automobiles), along with medium duty and heavy duty (MHD) trucks. Medium duty trucks would be trucks between 10,000 pounds and 26,000 pounds gvwr, and heavy duty trucks would be over 26,000 pounds gvwr. In addition, the section would prescribe the fuel economy targets and the span of years the standards would encompass. Two distinct periods of time would be delineated during which the Secretary would promulgate standards for automobiles. The first 10-year period would begin in MY 2011 and end in MY 2020. The second 10-year period would begin in MY 2021 and end in MY 2030. MHD trucks would follow

a separate and distinct path from the automobiles due to the need to create an entirely new fuel economy program for these types of vehicles and the expectation that entirely new vehicle attributes would have to be identified to promulgate standards.

*Baseline Average Fuel Economy Standards for Medium and Heavy Duty Trucks.*—The Committee recognizes the need for peer reviewed scientific and engineering analysis to aid in the creation of the MHD truck fuel economy program. The bill, as reported, would mandate the Secretary to commission a National Academy of Sciences (NAS) study to review automobile and MHD truck fuel economy technologies. The MHD truck fuel economy program would not be initiated until the initial NAS report is completed. The Committee expects that the NAS study would provide the initial research foundation for DOT and EPA. The EPA has the responsibility to test automobile fuel economy for DOT. Currently, the EPA does not have a test cycle for MHD trucks and would need to create one in order to provide DOT the data needed to enforce the standards. Therefore, the creation of initial baseline standards would not occur until 2 model years after the NAS report would be issued.

*Medium and Heavy Duty Truck Fuel Economy Average After Baseline Model Year.*—In the two-year period preceeding baseline standards, the Committee intends that DOT and EPA would work collaboratively to establish the test cycle and the vehicle attributes to establish standards for the MHD truck fuel economy program. After that two-year period has run and the agencies have created a MHD truck fuel economy program, the Committee expects that the first baseline standard would be based on the MHD truck model year in which the NAS report was issued. In the succeeding years after the initial baseline standard, the average fuel economy for the MHD truck fleet would increase by four percent over the previous model year, unless the Secretary amends the standard based on conditions set forth in Section 103. The four percent annual rate of increase would remain in force for 20 years after the initial baseline standard was issued.

*Baseline Fuel Economy Standards for Automobiles.*—The fuel economy program for automobiles begins with the 10-year period beginning with MY 2011 and ending in MY 2020. As opposed to a corporate fuel economy average where each individual manufacturer would have to meet a prescribed mpg target, the fuel economy target is a national average that measures the entire U.S. fleet. The Committee chose a national average in order to protect manufacturers with widely variant fleet configurations from having to immediately alter their fleet mix because of the new regulations. The Committee would expect the NHTSA to assign fuel economy targets to each manufacturer that would reach the overall national fuel economy target for that model year. The Committee would expect that the NHTSA will assign the fuel economy responsibilities in an equitable manner which will allow each manufacturer the flexibility to follow its individual product plans while improving fuel economy throughout its fleet. The Committee also would expect that the NHTSA would increase fuel economy standards each year within the first 10-year period in a ratable fashion so as to best position the manufacturers to meet the overall goal of 35 mpg by MY 2020.

The Committee notes in its decision to prescribe the average fuel economy of 35 mpg by MY 2020 that the rate of change is consistent with the recommendations from the NRC's 2002 study, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards*, as a level that is achievable by the automobile industry and would garner fuel savings over the life of the vehicle that would pay for the fuel saving technologies. The Committee on Commerce, Science, and Transportation also recognizes the need of having the NHTSA provide its expertise to ensure that the rate of change is balanced with other important goals, including safety and the stability of the automobile industry. During the first 10-year period, if the NHTSA finds maximum feasible level for fuel economy for a certain model year is less than the ratable fuel economy level to achieve 35 mpg by MY 2020, the agency would be able to lower the rate of change and prescribe the maximum feasible level fuel economy as defined in Section 103. The Committee expects that the Secretary would lower the standard in very limited circumstances where there is clear and convincing evidence that the result of increasing standards to the ratable level would produce a significant outcome that would outweigh the benefits of the mandated fuel economy level for that year.

*Automobile Fuel Economy Average for Model Years 2021 through 2030.*—The second 10-year period for the automobile fuel economy program begins in MY 2021 and ends in MY 2030. In this period, the average fuel economy for a model year would be at least four percent greater than the previous model year. The Committee recognizes that a mandated increase of fuel economy this far into the future must take into account circumstances that cannot be contemplated at the present time. Therefore, the bill would provide discretion to the NHTSA to analyze the technology and market conditions. If the NHTSA finds that a four percent increase does not comport with current technology or has unintended consequences, the agency could amend the standards in accordance with Section 103 so as to achieve the highest fuel economy levels balanced with the other values delineated in that section.

*Vehicle Attributes.*—In oversight of the CAFE program and in testimony received from the March 2007 and May 2007 hearings on automobile fuel economy, all of the panelists commented on the CAFE reforms undertaken by the NHTSA in promulgating light truck fuel economy rules for MY 2008 through MY 2011. All parties involved in the fuel economy debate that testified spoke to the positive aspects to the vehicle attribute system created by the NHTSA. The expert commentators noted that using the vehicle attribute of footprint size expressed as a continuous curve would have the effect of guaranteeing fuel economy improvements throughout the light truck fleet by integrating technologies as opposed to relying only on reducing vehicle weight. In addition, the new system would assure improvement by every manufacturer regardless of the mix of types and sizes of light trucks manufactured.

In light of the testimony and the reformed CAFE program, the Committee decided to provide the NHTSA the authority to reform passenger car fuel economy standards. The Secretary would have the authority to use vehicle attributes to prescribe the standards in the form of a mathematical function, in a similar fashion as was done under the reformed light truck rule. The Committee under-

stands that there may be different attributes that could be used for passenger cars and for MHD trucks than what was selected for light trucks. The Secretary also could issue standards using this authority for a group of years as well as on a single year basis. In using this authority, the Secretary could not issue standards that are expressed as a uniform percentage increase per manufacturer. The Committee understands that a uniform percentage increase would unfairly increase the burden on automakers that have made the largest investments in improving fuel economy. Therefore, the usage of such a system is prohibited.

*Section 103. Amending fuel economy standards*

Prior to the reporting of S. 357, passenger fuel economy standards have not been addressed in over 20 years. Light truck fuel economy did not increase from 1996 to 2003. MHD truck fuel economy had never been addressed in the history of the fuel economy program. Because of the difficulty of addressing fuel economy standards consistently, the Committee felt that the next fuel economy program should be in place over a significant period to avoid potential stagnation of the standards which have led to lost oil savings and increased the dependence on imported oil. S. 357, as reported, would create a 20-year fuel economy program for automobiles and light trucks. While a 20-year program guarantees consistent progress over a long period of time, it is impossible to foresee every contingency that could affect decisions related to increasing fuel economy. Therefore, the Committee felt that the NHTSA should be positioned to exercise its discretion if situations arose where the prescribed standards would be unattainable and a lower fuel economy level would be the prudent path. Section 103 would provide the guidelines to allow the Secretary to lower the standard.

The Committee's intent is that the discretion provided to the Secretary should be used in the most limited circumstances when the evidence warrants amending the standard. The prescribed fuel economy levels are not goals that can be avoided without consequence and should be interpreted as the fuel economy level for that model year unless the Secretary's careful analysis based on all the requisite factors proves otherwise.

The Secretary would have the discretion to increase the standard to a level that is more than required for a particular model year, as well as the discretion to lower the standard. If the Secretary finds that the maximum feasible level fuel economy is lower than the prescribed fuel economy for a particular model year, the Secretary could lower the standard. In order to lower the standard, the Secretary would have to prove by clear and convincing evidence that the fuel economy standard for a particular model year is not cost effective.

*Requirements for Lower Standard.*—If the Secretary decides to lower the standard, a notice of proposed rulemaking would be issued at least 30 months before the model year in which the prescribed standard would apply. This requirement would not apply to MY 2011 because it is expected that there will be less than 30 months before the 2011 model year during which the Act would be in force. The notice would include a detailed analysis that was the foundation for the determination to lower the standard. The Secretary would issue the final rule at least 18 months before the

model year in which the fuel economy standard would apply. In addition, the Secretary must submit a report to Congress that would outline the steps to be taken to avoid further reductions in average fuel economy standards.

*Maximum Feasible Standard and Decisions on Maximum Feasible Fuel Economy.*—In deciding the average fuel standard prescribed for automobiles and MHD trucks if the Secretary decides that the fleet cannot achieve the standard prescribed by the Act, the Secretary would set the fuel economy standard at the maximum feasible level. There are 2 sets of determinations that would be required in setting the maximum feasible level. In order for the Secretary to decide the maximum feasible average fuel economy, the Secretary would consider the economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, environmental impacts, and the need of the United States to conserve energy. After undertaking the evaluation of these criteria, the Secretary would ensure that the fuel economy standard is the highest standard that is technologically achievable; can be achieved without materially reducing the overall safety of automobiles and MHD trucks; is not less than the standard for the applicable types of vehicles from any prior year; and is cost effective.

*Defining and Determining Cost Effectiveness.*—A fuel economy standard would be considered cost effective when the total value of reduced fuel use from a proposed fuel economy standard is greater than or equal to the total cost of such a standard. The total value would include the monetary value of fuel use over the life of the vehicle. In making the total cost determination, the Secretary would not include the cost of fuel economy technologies whose cost is substantially more than the value of the reduction of fuel attributable to that technology. In a total cost analysis, the Committee intends that the cost of fuel economy technologies only should be included if they can be justified in the cost of the fuel savings. There are operative technologies, such as hydrogen fuel cells, which will have significant fuel savings, but are too expensive to be reasonably used as a means to improve fuel economy. The Committee does not intend for these types of technologies to be included in the total cost analysis.

As part of the total value/total cost analysis to determine cost effectiveness, the Secretary would consider the following additional factors in the calculation:

- Economic security;
- The impact of oil or energy intensity of the U.S. economy on the sensitivity of the economy to oil and other fuel price changes, including the magnitude of gross domestic product losses in response to short term price shocks or long term price increases;
- National security, including the impact of U.S. payments for oil and other fuel imports on political, economic, and military developments in unstable or unfriendly oil-exporting countries;
- The uninternalized costs of pipeline and storage oil seepage, and the risk of oil spills from production, handling, and transport, along with related landscape damage;

- The emissions of pollutants including greenhouse gases over the lifecycle of the fuel and the resulting costs to human health, the economy, and the environment; and
- Such additional factors as the Secretary deems relevant.

The Committee understands that the NHTSA, in undertaking economic analyses to increase fuel economy standards, relies on peer reviewed literature to help quantify such factors. The Committee encourages that the NHTSA not deviate from that practice and encourages the agency to quantify the terms in a fashion consistent with cost benefit practices. However, the Committee strongly encourages the NHTSA to quantify terms at a value greater than zero if there is significant deviation in the professional literature. If NHTSA finds that there is no pertinent peer reviewed professional literature to guide the agency in assigning a value, the Committee encourages the Secretary to commission peer reviewed literature from an entity such as the NAS to aid in the proper valuation of the factors.

*Minimum Valuation.*—The Secretary, in considering the value of a gallon of gasoline to be saved by a proposed fuel economy standard, would use the gasoline prices projected by the Energy Information Administration (EIA) for the period covered by the standard. The Committee understands that the EIA promulgates 20-year projections for gasoline prices. The Committee intends that the Secretary would use the span of years and gasoline prices that covers the proposed fuel economy standards from the 20-year projection.

*Consultation Requirement.*—Before the Secretary would issue a notice to prescribe or amend a proposed average fuel economy standard, the Secretary would provide the Secretary of Energy and the Administrator of the EPA at least 10 days after receiving the notice so as to allow them to comment if they find the proposed standard would adversely affect the conservation goals of either agency. To the extent the Secretary of Transportation does not revise the proposed standard to take into account the comments from the Energy Department or the EPA on any adverse impact of the standard, the Secretary of Transportation would include those comments in the notice.

#### *Section 104. Definitions*

This section would define 3 major terms used throughout the bill which have specific contextual meaning in the statutory regime created by S. 357. The terms would be:

*Automobile:* As defined the term would mean a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at not more than 10,000 pounds gvwr. “Automobile” as operative in the bill would include passenger cars and light trucks (such as SUVs and minivans). The definition captures light trucks that weigh between 8,500 pounds gvwr and 10,000 pounds gvwr, which were previously exempt from CAFE.

*Medium Duty Truck:* As defined, the term would mean a truck as defined in 49 U.S.C. 30127 with a gvwr between 10,000 pounds and 26,000 pounds.

*Heavy Duty Truck:* As defined, the term would mean a truck as defined in 49 U.S.C. 30127 with a gvwr in excess of 26,000 pounds.



*Deadline for Regulations:* The regulations to implement the fuel economy program created in S. 357 would have to be proposed no later than one year after the date of enactment of this Act, and final regulations would have to be issued no later than 18 months after the date of enactment.

*Section 105. Ensuring safety of automobiles*

An ongoing issue that is impacting the safety of the automobile fleet is the interaction of passenger cars and light trucks. The significant differences in size and weight between cars and light trucks have placed the drivers of passenger cars at a safety disadvantage in light truck/passenger car collisions. These types of collisions have increased due to the increase of light trucks being used in passenger duty. To address this ongoing safety concern, the Act would require the NHTSA to initiate a rulemaking in 2010 to issue standards to mitigate the difference in weight and size between the largest and smallest vehicles, and to improve bumper height compatibility between vehicles. The final rule would have to be issued before 2013.

*Section 106. Credit trading program*

The Committee recognizes the need to create flexibility for automobile manufacturers in creating a new regulatory regime to improve fuel economy. To aid manufacturers that may need more transition assistance to meet the new standards, the Secretary would be permitted to establish, by regulation, a fuel economy credit trading program to allow manufacturers whose automobiles exceed the average fuel economy standards to earn credits to be sold to manufacturers whose automobiles fail to achieve the prescribed standards. Automakers may carry forward and carry back earned fuel economy credits for five years as opposed to the three years as currently permitted.

*Section 107. Labels for fuel economy and greenhouse gas emissions*

To aid in consumer education and awareness of the best performing automobiles with respect to fuel economy and greenhouse gas emissions, S. 357 would create a labeling program to help consumers identify vehicles that significantly exceed the standards created by the average fuel economy program. The labeling regime would only apply to automobiles, not to MHD trucks. S. 357 would create 2 labeling programs—the green label for vehicles that meet or exceed the applicable fuel economy standard or have the lowest greenhouse gas emissions over the useful life of the vehicle, and the gold star label for automobiles that achieve a fuel economy of at least 50 mpg.

*Section 108. Continued applicability of existing standards*

There is a period during which the new national average fuel economy program will be implemented, and there will be no standards applied because of the repeal of the current operative sections of 49 U.S.C. 32902. In order to maintain fuel economy standards in this period, nothing in S. 357 would be construed to affect the application of the current CAFE statutes until 2011.

*Section 109. National Academy of Sciences studies*

The NHTSA and several experts on automobile fuel economy noted that the work done by the NRC in its 2002 CAFE study was essential in providing explanations and guidance for identifying and integrating potential fuel economy technologies to use in proposed fuel economy standards. The NHTSA and those experts also stated that the study is now 5 years old, and it would be of great utility to have it updated. After receiving this testimony, the Committee decided the Secretary should commission a NAS study to update the NRC fuel economy technology study from 2002 and to evaluate how the technologies could be integrated to meet the reformed fuel economy attribute system. The study would be commissioned as soon as practicable after the date of enactment, and the NAS would report its findings within 18 months of the study being commissioned. The study would be updated every 5 years.

*Section 110. Standards for executive agency automobiles*

To ensure the Federal executive agency fleet improves its fuel economy, Federal agencies would have to ensure that new automobile purchases are as fuel efficient as practicable. Combat related vehicles, law enforcement vehicles, and emergency rescue vehicles would be excluded from this section. The General Services Administration would submit a report to Congress on the first year's progress.

*Section 111. Ensuring availability of flexible fuel automobiles*

This section would mandate an increase in the number of flexible fuel vehicles as part of the new automobile fleet. The percentage of flexible fuel vehicles compared to all automobiles manufactured would comply with the following schedule:

by 2012 .....	50 percent
by 2013 .....	60 percent
by 2014 .....	70 percent
by 2015 .....	80 percent.

An economic hardship exemption could be granted for those manufacturers that cannot comply with the manufacturing schedule.

*Section 112. Increasing consumer awareness of flexible fuel automobiles*

In order to improve consumer awareness about the availability and utility of flexible fuel automobiles, the Secretary would implement a program to have automobile manufacturers prominently display a permanent badge or emblem on the quarter panel or tailgate of each flexible fuel automobile. Each flexible fuel automobile would also have a fuel tank cap that is labeled to indicate that the automobile can be operated using flexible fuel. In addition, the manufacturer would include information in the owner's manual of each flexible fuel automobile that describes the capability of the automobile to operate using alternative fuel and the benefits of using alternative fuel, including its renewable nature and environmental benefits.

*Section 113. Periodic review of accuracy of fuel economy labeling procedures*

The EPA reformed the test procedures to improve the accuracy of fuel economy labels that are placed on new automobiles and issued the final rule on December 27, 2006. To ensure that the labels better reflect the actual mileage being achieved by automobiles, the EPA would review labeling procedures and report to Congress on whether the procedures warrant revision beginning in 2009.

*Section 114. Tire fuel efficiency consumer information*

One component that would improve the fuel economy of automobiles is the rolling resistance of replacement tires. To improve consumer awareness and to aid consumers in making choices to improve automobile fuel economy, the Secretary would be mandated to issue a rule to create a national tire fuel efficiency information program efficiency rating system.

*Section 115. Advanced battery initiative*

Electric hybrid engines and plug-in hybrids are limited by current battery technologies. Automakers are researching the capability of lithium ion battery technology, which could provide more energy storage and ultimately significant reductions in fuel usage. To support this endeavor, in conjunction with ongoing work at the Department of Energy, the Secretary would establish an initiative to support research, development, demonstration, and the commercial application of batteries. The initiative would support all types of battery research, not just for automotive applications.

*Section 116. Biodiesel standards*

With the increasing number of sources of biodiesel fuel providing product to the marketplace, there are concerns from consumers that varying purity and composition may damage engines. To address these concerns, the Secretary, in consultation with the EPA and the Department of Energy would promulgate standards for biodiesel blends.

*Section 117. Use of civil penalties for research and development*

The Department of Transportation collects fines from manufacturers that are not in compliance with the CAFE standards and remits the funds collected to the Department of the Treasury. This section would allow the Secretary to keep 50 percent of the fines collected to be used to develop a research program to improve fuel economy performance and technologies and aid in rulemaking activities in relation to fuel economy, including the commissioning of peer reviewed research to assist in cost benefit analysis.

*Section 118. Energy security fund and alternative fuel grant program*

Under this section, the Secretary would allocate 50 percent of the fines collected from manufacturers that are not in compliance with fuel economy standards to a fund managed by the Secretary of Energy through the Clean Cities Program. The Fund would provide grants of up to \$30,000 to gasoline retailers to install alternative

fuel dispensing infrastructure. No one gas station could receive more than \$90,000 in one fiscal year.

## TITLE II—PRICE GOUGING

### *Section 201. Short title*

This section would provide that this title may be cited as the “Petroleum Consumer Price Gouging Protection Act.”

### *Section 202. Definitions*

Section 202 would provide for a number of notable definitions, as follows:

*Affected Area:* An area covered by a Presidential declaration of energy emergency.

*Supplier:* Any person engaged in the trade or business of selling or reselling, or distributing crude oil, gasoline, or petroleum distillates.

*Price Gouging:* The charging of an unconscionably excessive price by a supplier in an affected area.

*Unconscionably Excessive Price:* A price changed in an affected area for crude, gasoline, or petroleum distillates that (i) constitutes a gross disparity between the average price 30 days prior to an energy emergency is declared by the President, (ii) grossly exceeds the price for the same or similar commodity that is obtainable by purchasers from other suppliers in the same relevant geographic market within the affected area, or (iii) represents an exercise of unfair leverage or unconscionable means by a supplier during an energy emergency, unless such price is attributable to increased wholesale or operational costs, including replacement costs, outside the control of the supplier and is not attributable to local, regional, national, or international market conditions.

### *Section 203. Prohibition on price gouging during energy emergencies*

Section 203 would make it unlawful for any supplier to sell crude oil, gasoline, or petroleum distillates at an unconscionably excessive price in an area subject to an energy emergency declared by the President. In determining whether an unlawful act occurred under this section, the price which would otherwise exist in a competitive and freely functioning market shall be considered, among other factors.

### *Section 204. Prohibition on market manipulation*

Section 204 would make it unlawful for any person to use a manipulative or deceptive device of contrivance in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale. The FTC may prescribe rules and regulations as necessary.

### *Section 205. Prohibition on false information*

Section 205 would make it unlawful for any person to report required information to any federal agency related to the wholesale price of crude oil, gasoline, or petroleum distillates that the person knows, or reasonably should have known, is false or misleading and the person intended the information to affect data compiled by the federal government for statistical or analytical purposes.

*Section 206. Presidential declaration of energy emergency*

Section 206 would authorize the President to declare that a Federal energy emergency exists, if the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, or petroleum distillates due to a disruption caused by a major disaster or significant pricing anomalies in the national energy market.

The energy emergency declaration would specify the period, not to exceed 30 days, for which the declaration applies, the circumstances necessitating the declaration, and the area to which it applies. The President could extend a declaration multiple times but not more than 30 days at one time, and discontinue a declaration before its expiration.

*Section 207. Enforcement by the Federal Trade Commission*

Section 207 would authorize the FTC to enforce the Act and would direct the Commission to prioritize enforcement concerning companies with sales of crude oil, gasoline, and petroleum distillates in excess of \$500,000,000. Violations of any provision of the Act would be treated as an unfair or deceptive act or practice under a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 USC 57a(a)(1)(b)).

The section would require the FTC, following the declaration of an energy emergency, to establish within the Commission a toll-free consumer hotline and a program to develop and distribute public information to assist residents in an affected area. The FTC further would be required to consult with the attorney general and United States Attorney for the districts affected by the declaration as well as State and local law enforcement to determine whether any supplier is charging or has charged an unconscionably excessive price and conduct an investigation to determine whether any supplier has violated section 203 of the title.

*Section 208. Enforcement by state attorney general*

Section 208 would authorize a State to bring a civil action in an appropriate district court of the United States to enforce section 203 of this title whenever the attorney general has reason to believe that residents of the State have been harmed by a violation of Section 203.

The section further would require the State to provide written notice to the FTC of any civil action brought pursuant to this title and authorize the FTC to intervene in such civil action. If the FTC institutes an action for a violation of this title, no State attorney general, or official or agency of the State, would be permitted to bring an action during the pendency of that action against any defendant named in the complaint. Nothing in this section would prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State with respect to the conducting of investigations, compelling of witnesses, and production of evidence.

This section would not prohibit an authorized State official from enforcing a civil or criminal statute of that State.

*Section 209. Penalties*

Section 209 would create a civil penalty of not more than \$1,000,000 for violations of section 204 or 205 of this title and a civil penalty of not more than \$500,000 for independent small business marketers and \$5,000,000 in the case of any other suppliers for violations of section 203, in addition to any other penalty available under the Federal Trade Commission Act (15 USC 41 et seq.). In assessing penalties, each day of a continuing violation would be considered a separate violation, and the FTC should consider the seriousness of the violation and any remedial efforts of the violator.

The section further would make a violation of Section 203 a crime punishable by a fine of not more than \$5,000,000, imprisonment for not more than 5 years, or both.

*Section 210. Effect on other laws*

Section 210 would establish that nothing in this title shall be construed to limit or affect in any way the FTC's authority under the Federal Trade Commission Act (15 USC 41 et seq.) or any other provision of law. This title would not preempt any State law.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART A. GENERAL

CHAPTER 301. MOTOR VEHICLE SAFETY

SUBCHAPTER II. INFORMATION, STANDARDS, AND REQUIREMENTS

**§ 30123A. *Tire fuel efficiency consumer information***

(a) *RULEMAKING.*—

(1) *IN GENERAL.*—*Not later than 18 months after the date of enactment of the Ten-in-Ten Fuel Economy Act, the Secretary of Transportation shall, after notice and opportunity for comment, promulgate rules establishing a national tire fuel efficiency consumer information program for tires designed for use on motor vehicles to educate consumers about the effect of tires on automobile fuel efficiency.*

(2) *ITEMS INCLUDED IN RULE.*—*The rulemaking shall include—*

*(A) a national tire fuel efficiency rating system for motor vehicle tires to assist consumers in making more educated tire purchasing decisions;*

*(B) requirements for providing information to consumers, including information at the point of sale and other potential information dissemination methods, including the Internet;*

(C) specifications for test methods for manufacturers to use in assessing and rating tires to avoid variation among test equipment and manufacturers; and

(D) a national tire maintenance consumer education program including, information on tire inflation pressure, alignment, rotation, and tread wear to maximize fuel efficiency.

(3) **APPLICABILITY.**—This section shall not apply to tires excluded from coverage under section 575.104(c)(2) of title 49, Code of Federal Regulations, as in effect on date of enactment of the Ten-in-Ten Fuel Economy Act.

(b) **CONSULTATION.**—The Secretary shall consult with the Secretary of Energy and the Administrator of the Environmental Protection Agency on the means of conveying tire fuel efficiency consumer information.

(c) **REPORT TO CONGRESS.**—The Secretary shall conduct periodic assessments of the rules promulgated under this section to determine the utility of such rules to consumers, the level of cooperation by industry, and the contribution to national goals pertaining to energy consumption. The Secretary shall transmit periodic reports detailing the findings of such assessments to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

(d) **TIRE MARKING.**—The Secretary shall not require permanent labeling of any kind on a tire for the purpose of tire fuel efficiency information.

(e) **PREEMPTION.**—When a requirement under this section is in effect, a State or political subdivision of a State may adopt or enforce a law or regulation on tire fuel efficiency consumer information only if the law or regulation is identical to that requirement. Nothing in this section shall be construed to preempt a State or political subdivision of a State from regulating the fuel efficiency of tires not otherwise preempted under this chapter.

\* \* \* \* \*

#### **§30129. Vehicle compatibility and aggressivity reduction standard**

(a) **STANDARDS.**—The Secretary of Transportation shall issue a motor vehicle safety standard to reduce automobile incompatibility and aggressivity. The standard shall address characteristics necessary to ensure better management of crash forces in multiple vehicle frontal and side impact crashes between different types, sizes, and weights of automobiles with a gross vehicle weight of 10,000 pounds or less in order to decrease occupant deaths and injuries.

(b) **CONSUMER INFORMATION.**—The Secretary shall develop and implement a public information side and frontal compatibility crash test program with vehicle ratings based on risks to occupants, risks to other motorists, and combined risks by vehicle make and model.

\* \* \* \* \*

#### SUBCHAPTER IV. ENFORCEMENT AND ADMINISTRATIVE

#### **§30165. Civil penalty**

(a) **CIVIL PENALTIES.**—

(1) IN GENERAL.—A person that violates any of section 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147, or a regulation prescribed thereunder, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is \$15,000,000.

(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under this paragraph shall be \$10,000 in the case of—

- (i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or
- (ii) a violation of section 30112(a)(2) of this title.

(B) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by that section. The maximum penalty under this paragraph for a related series of violations is \$15,000,000.

(3) SECTION 30166.—A person who violates section 30166 or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$5,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$15,000,000.

(4) SECTION 30123A.—*Any person who fails to comply with the national tire fuel efficiency consumer information program under section 30123A is liable to the United States Government for a civil penalty of not more than \$50,000 for each violation.*

(b) COMPROMISE AND SETOFF.—

(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

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## PART C. INFORMATION, STANDARDS, AND REQUIREMENTS

## CHAPTER 329. AUTOMOBILE FUEL ECONOMY

**§ 32901. Definitions**

(a) GENERAL.—In this chapter—

(1) “alternative fuel” means—

(A) methanol;

(B) denatured ethanol;

(C) other alcohols;

(D) except as provided in subsection (b) of this section, a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(E) natural gas;

(F) liquefied petroleum gas;

(G) hydrogen;

(H) coal derived liquid fuels;

(I) fuels (except alcohol) derived from biological materials;

(J) electricity (including electricity from solar energy); and

(K) any other fuel the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.

(2) “alternative fueled automobile” means an automobile that is a—

(A) dedicated automobile; or

(B) dual fueled automobile.

[(3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—

[(A) not more than 6,000 pounds gross vehicle weight; or

[(B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary decides by regulation that—

[(i) an average fuel economy standard under this chapter for the vehicle is feasible; and

[(ii) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.]]

*(3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at not more than 10,000 pounds gross vehicle weight.*

(4) “automobile manufactured by a manufacturer” includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufac-

turer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.

(5) “average fuel economy” means average fuel economy determined under section 32904 of this title.

(6) “average fuel economy standard” means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) “dedicated automobile” means an automobile that operates only on alternative fuel.

(8) “dual fueled automobile” means an automobile that—

(A) is capable of operating on alternative fuel and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;

(C) for model years 1993-1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

(8A) “flexible fuel automobile” means an automobile described in paragraph (8)(A).

(9) “fuel” means—

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(10) “fuel economy” means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

(10A) “heavy-duty truck” means a truck (as defined in section 30127) with a gross vehicle weight in excess of 26,000 pounds.

(11) “import” means to import into the customs territory of the United States.

(12) “manufacture” (except under section 32902(d) of this title) means to produce or assemble in the customs territory of the United States or to import.

(13) “manufacturer” means—

(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and

(B) if more than 1 person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.

(13A) *“medium-duty truck” means a truck (as defined in section 30127) with a gross vehicle weight of at least 10,000 pounds but not more than 26,000 pounds.*

(14) “model” means a class of automobiles as decided by regulation by the Administrator after consulting and coordinating with the Secretary.

(15) “model year”, when referring to a specific calendar year, means—

(A) the annual production period of a manufacturer, as decided by the Administrator, that includes January 1 of that calendar year; or

(B) that calendar year if the manufacturer does not have an annual production period.

[(16) “passenger automobile” means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation—

[(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

[(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.]]

(b) **AUTHORITY TO CHANGE PERCENTAGE.**—The Secretary may prescribe regulations changing the percentage referred to in subsection (a)(1)(D) of this section to not less than 70 percent because of requirements relating to cold start, safety, or vehicle functions.

(c) **MINIMUM DRIVING RANGES FOR DUAL FUELED PASSENGER AUTOMOBILES.**—(1) The Secretary shall prescribe by regulation the minimum driving range that dual fueled automobiles that are passenger automobiles must meet when operating on alternative fuel to be dual fueled automobiles under sections 32905 and 32906 of this title. A determination whether a dual fueled automobile meets the minimum driving range requirement under this paragraph shall be based on the combined Agency city/highway fuel economy as determined for average fuel economy purposes for those automobiles.

(2)(A) The Secretary may prescribe a lower range for a specific model than that prescribed under paragraph (1) of this subsection. A manufacturer may petition for a lower range than that prescribed under paragraph (1) for a specific model.

(B) The minimum driving range prescribed for dual fueled automobiles (except electric automobiles) under subparagraph (A) of this paragraph or paragraph (1) of this subsection must be at least 200 miles.

(C) If the Secretary prescribes a minimum driving range of 200 miles for dual fueled automobiles (except electric automobiles) under paragraph (1) of this subsection, subparagraph (A) of this

paragraph does not apply to dual fueled automobiles (except electric automobiles).

(3) In prescribing a minimum driving range under paragraph (1) of this subsection and in taking an action under paragraph (2) of this subsection, the Secretary shall consider the purpose set forth in section 3 of the Alternative Motor Fuels Act of 1988 (Public Law 100-494, 102 Stat. 2442), consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant.

### **§ 32902. Average fuel economy standards**

(a) **[NON-PASSENGER AUTOMOBILES.—]** *PRESCRIPTION OF STANDARDS BY REGULATION.*—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for **[automobiles (except passenger automobiles)]** *automobiles, medium-duty trucks, and heavy-duty trucks* manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes of automobiles.

**[(b) PASSENGER AUTOMOBILES.—]** Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year 1984 shall be 27.5 miles a gallon.

(b) *STANDARDS FOR AUTOMOBILES, MEDIUM-DUTY TRUCKS, AND HEAVY-DUTY TRUCKS.—*

(1) *IN GENERAL.—*The Secretary of Transportation, after consultation with the Administrator of the Environmental Protection Agency, shall prescribe average fuel economy standards for automobiles, medium-duty trucks, and heavy-duty trucks manufactured by a manufacturer in each model year beginning with model year 2011 in accordance with subsection (c).

(2) *ANNUAL INCREASES IN FUEL ECONOMY STANDARDS.—*

(A) *BASELINE AVERAGE FUEL ECONOMY STANDARDS FOR MEDIUM- AND HEAVY-DUTY TRUCKS.—*For the first 2 model years beginning after the submission to Congress of the initial report by the National Academy of Sciences required by section 10 of the Ten-in-Ten Act, the average fuel economy required to be attained for each attribute class of medium-duty trucks and heavy-duty trucks shall be the average combined highway and city miles-per-gallon performance of all vehicles within that class in the model year immediately preceding the first of those 2 model years (rounded to the nearest  $\frac{1}{10}$  mile per gallon).

(B) *MEDIUM- AND HEAVY-DUTY TRUCK FUEL ECONOMY AVERAGE AFTER BASELINE MODEL YEAR.—*For each model year beginning after the 2 model years specified in subparagraph (A), the average fuel economy required to be attained by the fleet of medium-duty trucks and heavy-duty trucks manufactured in the United States shall be at least 4 percent greater than the average fuel economy required to be attained for the fleet in the previous model year (rounded to the nearest  $\frac{1}{10}$  mile per gallon). Standards shall be

*issued for medium-duty trucks and heavy-duty trucks for 20 model years.*

(3) *FUEL ECONOMY TARGET FOR AUTOMOBILES.—*

(A) *BASELINE AVERAGE FUEL ECONOMY STANDARDS FOR AUTOMOBILES.—The Secretary shall prescribe average fuel economy standards for automobiles in each model year beginning with model year 2011 to achieve a combined fuel economy standard for model year 2020 of at least 35 miles per gallon for the fleet of automobiles manufactured or sold in the United States. The average fuel economy standards prescribed by the Secretary shall be the maximum feasible average fuel economy standards for model years 2011 through 2019.*

(B) *AUTOMOBILE FUEL ECONOMY AVERAGE FOR MODEL YEARS 2021 THROUGH 2030.—For model years 2021 through 2030, the average fuel economy required to be attained by the fleet of automobiles manufactured or sold in the United States shall be at least 4 percent greater than the average fuel economy standard required to be attained for the fleet in the previous model year (rounded to the nearest  $\frac{1}{10}$  mile per gallon).*

[(c) *AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to paragraph (2) of this subsection, the Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.*

[(2) *If an amendment increases the standard above 27.5 miles a gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an amendment, except that the 15 calendar days referred to in section 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of Congress disapproves the amendment under those procedures, the amendment does not take effect.*]

(c) *AMENDING FUEL ECONOMY STANDARDS.—*

(1) *IN GENERAL.—Notwithstanding subsections (a) and (b), the Secretary of Transportation—*

*(A) may prescribe a standard higher than that required under subsection (b); or*

*(B) may prescribe an average fuel economy standard for a class of automobiles, medium-duty trucks, or heavy-duty trucks that is the maximum feasible level for the model year, despite being lower than the standard required under subsection (b), if the Secretary, based on clear and convincing evidence, that the average fuel economy standard prescribed in accordance with subsections (a) and (b) for that class of vehicles in that model year is shown not to be cost-effective.*

(2) *REQUIREMENTS FOR LOWER STANDARD.*—Before adopting an average fuel economy standard for a class of automobiles, medium-duty trucks, or heavy-duty trucks in a model year under paragraph (1)(B), the Secretary of Transportation shall do the following:

(A) *NOTICE OF PROPOSED RULE.*—Except for standards to be promulgated by 2011, at least 30 months before the model year for which the standard is to apply, the Secretary shall post a notice of proposed rulemaking for the proposed standard. The notice shall include a detailed analysis of the basis for the Secretary's determination under paragraph (1)(B).

(B) *FINAL RULE.*—At least 18 months before the model year for which the standard is to apply, the Secretary shall promulgate a final rule establishing the standard.

(C) *REPORT.*—The Secretary shall submit a report to Congress that outlines the steps that need to be taken to avoid further reductions in average fuel economy standards.

(3) *MAXIMUM FEASIBLE STANDARD.*—An average fuel economy standard prescribed for a class of automobiles, medium-duty trucks, or heavy-duty trucks in a model year under paragraph (1) shall be the maximum feasible standard.

(d) *EXEMPTIONS.*—(1) Except as provided in paragraph (3) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 **【passenger】** automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 **【passenger】** automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary—

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the **【passenger】** automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.

(2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of **【passenger】** automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(3) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer—

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title 30142.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) EMERGENCY VEHICLES.—(1) In this subsection, “emergency vehicle” means an automobile manufactured primarily for use—

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

[(f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.]

(f) DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—

(1) IN GENERAL.—When deciding maximum feasible average fuel economy under this section, the Secretary shall consider—

(A) economic practicability;

(B) the effect of other motor vehicle standards of the Government on fuel economy;

(C) environmental impacts; and

(D) the need of the United States to conserve energy.

(2) LIMITATIONS.—In setting any standard under subsection (b), (c), or (d), the Secretary shall ensure that each standard is the highest standard that—

(A) is technologically achievable;

(B) can be achieved without materially reducing the overall safety of automobiles, medium-duty trucks, and heavy-duty trucks manufactured or sold in the United States;

(C) is not less than the standard for that class of vehicles from any prior year; and

(D) is cost-effective.

(3) DETERMINING COST-EFFECTIVENESS.—

(A) IN GENERAL.—In determining cost effectiveness under paragraph (2)(D), the Secretary shall take into account the total value to the United States of reduced fuel use, including the monetary value of the reduced fuel use over the life of the vehicle.

(B) ADDITIONAL FACTORS FOR CONSIDERATION BY SECRETARY.—The Secretary shall consider in the analysis the following factors:

(i) Economic security.

(ii) The impact of the oil or energy intensity of the United States economy on the sensitivity of the econ-

omy to oil and other fuel price changes, including the magnitude of gross domestic product losses in response to short term price shocks or long term price increases.

(iii) National security, including the impact of United States payments for oil and other fuel imports on political, economic, and military developments in unstable or unfriendly oil-exporting countries.

(iv) The uninternalized costs of pipeline and storage oil seepage, and for risk of oil spills from production, handling, and transport, and related landscape damage.

(v) The emissions of pollutants including greenhouse gases over the lifecycle of the fuel and the resulting costs to human health, the economy, and the environment.

(vi) Such additional factors as the Secretary deems relevant.

(4) **MINIMUM VALUATION.**—When considering the value to consumers of a gallon of gasoline saved, the Secretary of Transportation shall use as a minimum value the value of the gasoline prices projected by the Energy Information Administration for the period covered by the standard beginning in the year following the year in which the standards are established.

(5) **COST-EFFECTIVE DEFINED.**—In this subsection, the term “cost-effective” means that the total value to the United States of reduced fuel use from a proposed fuel economy standard is greater than or equal to the total cost to the United States of such standard. Notwithstanding this definition, the Secretary shall not base the level of any standard on any technology whose cost to the United States is substantially more than the value to the United States of the reduction in fuel use attributable to that technology.

(g) **REQUIREMENTS FOR OTHER AMENDMENTS.**—(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under [subsection (a) or (d)] subsection (b), (c), or (d) of this section if the amended standard meets the requirements of subsection [(a) or (d),] subsection (b), (c), or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment [(and submit the amendment to Congress when required under subsection (c)(2) of this section)] at least 18 months before the beginning of the model year to which the amendment applies.

(h) **LIMITATIONS.**—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of dedicated automobiles; and

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel.

(i) **CONSULTATION.**—The Secretary of Transportation shall consult with the Secretary of Energy and the Administrator of the Environmental Protection Agency in carrying out this section and section 32903 of this title.



(j) SECRETARY OF ENERGY COMMENTS.—[(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.] *(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (b), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy and Administrator of the Environmental Protection Agency at least 10 days after the receipt of the notice during which the Secretary of Energy and Administrator may, if the Secretary of Energy or Administrator concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy or environmental protection goals of the Administrator, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy or Administrator on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.*

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy *and the Administrator* and provide the Secretary of Energy *and the Administrator* a reasonable time to comment.

(k) AUTHORITY OF THE SECRETARY.—

(1) VEHICLE ATTRIBUTES.—*The authority of the Secretary to prescribe by regulation average fuel economy standards for automobiles, medium-duty trucks, and heavy-duty trucks under this section includes the authority—*

(A) *to prescribe standards based on vehicle attributes and to express the standards in the form of a mathematical function; and*

(B) *to issue regulations under this title prescribing average fuel economy standards for 1 or more model years.*

(2) PROHIBITION OF UNIFORM PERCENTAGE INCREASE.—*When the Secretary prescribes a standard, or prescribes an amendment under this section that changes a standard, the standard may not be expressed as a uniform percentage increase from the fuel-economy performance of attribute classes or categories already achieved in a model year by a manufacturer.*

**§32902A. Requirement to manufacture flexible fuel automobiles**

(a) IN GENERAL.—*For each model year, each manufacturer of new automobiles described in subsection (b) shall ensure that the percentage of such automobiles manufactured in a particular model*

year that are flexible fuel vehicles shall be not less than the percentage set forth for that model year in the following table:

<b><i>“If the model year is:</i></b>	<b><i>The percentage of flexible fuel automobiles shall be:</i></b>
“2012 .....	50 percent
“2013 .....	60 percent
“2014 .....	70 percent
“2015 .....	80 percent”

(b) **AUTOMOBILES TO WHICH SECTION APPLIES.**—An automobile is described in this subsection if it—

- (1) is capable of operating on gasoline or diesel fuel;
- (2) is distributed in interstate commerce for sale in the United States; and
- (3) does not contain certain engines that the Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Energy, may temporarily exclude from the definition because it is technologically infeasible for the engines to have flexible fuel capability at any time during a period that the Secretaries and the Administrator are engaged in an active research program with the vehicle manufacturers to develop that capability for the engines.

### **§ 32903. Credits for exceeding average fuel economy standards**

(a) **EARNING AND PERIOD FOR APPLYING CREDITS.**—When the average fuel economy of [passenger] automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under [section 32902(b)–(d) of this title] subsection (a), (c), or (d) of section 32902 (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

- (1) any of the [3 consecutive model years] 5 consecutive model years immediately before the model year for which the credits are earned; and
- (2) to the extent not used under [clause (1) of this subsection,] paragraph (1), any of the [3 consecutive model years] 5 consecutive model years immediately after the model year for which the credits are earned.

(b) **PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.**—(1) Except as provided in paragraph (2) of this subsection, credits under this section are available to a manufacturer at the end of the model year in which earned.

(2)(A) Before the end of a model year, if a manufacturer has reason to believe that its average fuel economy for [passenger] automobiles will be less than the applicable standard for that model year, the manufacturer may submit a plan to the Secretary of Transportation demonstrating that the manufacturer will earn sufficient credits under this section within the next 3 model years to

allow the manufacturer to meet that standard for the model year involved. Unless the Secretary finds that the manufacturer is unlikely to earn sufficient credits under the plan, the Secretary shall approve the plan. Those credits are available for the model year involved if—

- (i) the Secretary approves the plan; and
- (ii) the manufacturer earns those credits as provided by the plan.

(B) If the average fuel economy of a manufacturer is less than the applicable standard under [section 32902(b)–(d) of this title] subsection (a), (c), or (d) of section 32902 after applying credits under subsection (a)(1) of this section, the Secretary of Transportation shall notify the manufacturer and give the manufacturer a reasonable time (of at least 60 days) to submit a plan.

(c) Determining number of credits. The number of credits a manufacturer earns under this section equals the product of—

- (1) the number of tenths of a mile a gallon by which the average fuel economy of the [passenger] automobiles manufactured by the manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard under [section 32902(b)–(d) of this title] subsection (a), (c), or (d) of section 32902; times
- (2) the number of [passenger] automobiles manufactured by the manufacturer during that model year.

(d) APPLYING CREDITS FOR [PASSENGER] AUTOMOBILES.—The Secretary of Transportation shall apply credits to a model year on the basis of the number of tenths of a mile a gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the number of [passenger] automobiles manufactured that model year by the manufacturer. Credits applied to a model year are no longer available for another model year. Before applying credits, the Secretary shall give the manufacturer written notice and reasonable opportunity to comment.

[(e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.]

(e) CREDIT TRADING AMONG MANUFACTURERS.—*The Secretary of Transportation may establish, by regulation, a corporate average fuel economy credit trading program to allow manufacturers whose automobiles exceed the average fuel economy standards prescribed under section 32902 to earn credits to be sold to manufacturers whose automobiles fail to achieve the prescribed standards.*

(f) REFUND OF COLLECTED PENALTY.—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.

\* \* \* \* \*

**§ 32908. Fuel economy information**

(a) DEFINITIONS.—In this section—

(1) “automobile” includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether the Secretary of Transportation has applied this chapter to the automobile under section 32901(a)(3)(B) of this title.

(2) “dealer” means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale.

(b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations of the Administrator of the Environmental Protection Agency, a manufacturer of automobiles shall attach a label to a prominent place on each automobile manufactured in a model year. The dealer shall maintain the label on the automobile. The label shall contain the following information:

(A) the fuel economy of the automobile.

(B) the estimated annual fuel cost of operating the automobile.

(C) the range of fuel economy of comparable automobiles of all manufacturers.

(D) a statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

(E) the amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

(F) a label (or a logo imprinted on a label required by this paragraph) that—

(i) reflects an automobile’s performance on the basis of criteria developed by the Administrator to reflect the fuel economy and greenhouse gas and other emissions consequences of operating the automobile over its likely useful life;

(ii) permits consumers to compare performance results under clause (i) among all automobiles; and

(iii) is designed to encourage the manufacture and sale of automobiles that meet or exceed applicable fuel economy standards under section 32902.

(G) a fuelstar under paragraph (5).

[(F)] (H) other information required or authorized by the Administrator that is related to the information required by clauses (A)–(D) of this paragraph.

(2) The Administrator may allow a manufacturer to comply with this subsection by—

(A) disclosing the information on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(B) including the statement required by paragraph (1)(E) of this subsection at a time and in a way that takes into account special circumstances or characteristics.

(3) For dedicated automobiles manufactured after model year 1992, the fuel economy of those automobiles under paragraph (1)(A)

of this subsection is the fuel economy for those automobiles when operated on alternative fuel, measured under section 32905(a) or (c) of this title, multiplied by .15. Each label required under paragraph (1) of this subsection for dual fueled automobiles shall—

(A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel;

(B) clearly identify the automobile as a dual fueled automobile;

(C) clearly identify the fuels on which the automobile may be operated; and

(D) contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy.

(4) *GREEN LABEL PROGRAM.*—

(A) *MARKETING ANALYSIS.*—*Not later than 2 years after the date of the enactment of the Ten-in-Ten Fuel Economy Act, the Administrator shall implement a consumer education program and execute marketing strategies to improve consumer understanding of automobile performance described in paragraph (1)(F).*

(B) *ELIGIBILITY.*—*Not later than 3 years after the date described in subparagraph (A), the Administrator shall issue requirements for the label or logo required under paragraph (1)(F) to ensure that an automobile is not eligible for the label or logo unless it—*

*(i) meets or exceeds the applicable fuel economy standard;*

*or*

*(ii) will have the lowest greenhouse gas emissions over the useful life of the vehicle of all vehicles in the vehicle attribute class to which it belongs in that model year.*

(5) *FUELSTAR PROGRAM.*—

(A) *IN GENERAL.*—*The Secretary shall establish a program, to be known as the “Fuelstar Program”, under which stars shall be imprinted on or attached to the label required by paragraph (1).*

(B) *GREEN STARS.*—*Under the Fuelstar Program, a manufacturer may include on the label maintained on an automobile under paragraph (1)—*

*(i) 1 green star for any automobile that meets the average fuel economy standard for the model year under section 32902; and*

*(ii) 1 additional green star for each 2 miles per gallon by which the automobile exceeds such standard.*

(C) *GOLD STARS.*—*Under the Fuelstar Program, a manufacturer may include a gold star on the label maintained on an automobile under paragraph (1) if the automobile attains a fuel economy of at least 50 miles per gallon.*

(c) *FUEL ECONOMY INFORMATION BOOKLET.*—(1) The Administrator shall prepare the booklet referred to in subsection (b)(1)(D) of this section. The booklet—

(A) shall be simple and readily understandable;

(B) shall contain information on fuel economy and estimated annual fuel costs of operating automobiles manufactured in each model year; and

- (C) may contain information on geographical or other differences in estimated annual fuel costs.
- (2)(A) For dual fueled automobiles manufactured after model year 1992, the booklet published under paragraph (1) shall contain additional information on—
- (i) the energy efficiency and cost of operation of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alternative fuel; and
  - (ii) the driving range of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alternative fuel.
- (B) For dual fueled automobiles, the booklet published under paragraph (1) also shall contain—
- (i) information on the miles a gallon achieved by the automobiles when operated on alternative fuel; and
  - (ii) a statement explaining how the information made available under this paragraph can be expected to change when the automobile is operated on mixtures of alternative fuel and gasoline or diesel fuel.
- (3) The Secretary of Energy shall publish and distribute the booklet. The Administrator shall prescribe regulations requiring dealers to make the booklet available to prospective buyers.
- (d) DISCLOSURE.—A disclosure about fuel economy or estimated annual fuel costs under this section does not establish a warranty under a law of the United States or a State.
- (e) VIOLATIONS.—A violation of subsection (b) of this section is—
- (1) a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and
  - (2) an unfair or deceptive act or practice in or affecting commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), except sections 5(m) and 18 (15 U.S.C. 45(m), 57a).
- (f) CONSULTATION.—The Administrator shall consult with the Federal Trade Commission and the Secretaries of Transportation and Energy in carrying out this section.
- (g) *INCREASING CONSUMER AWARENESS OF FLEXIBLE FUEL AUTOMOBILES.*—(1) *The Secretary of Transportation shall prescribe regulations that require the manufacturer of automobiles distributed in interstate commerce for sale in the United States—*
- (A) *to prominently display a permanent badge or emblem on the quarter panel or tailgate of each such automobile that indicates such vehicle is capable of operating on alternative fuel; and*
  - (B) *to include information in the owner's manual of each such automobile information that describes—*
    - (i) *the capability of the automobile to operate using alternative fuel;*
    - (ii) *the benefits of using alternative fuel, including the renewable nature, and the environmental benefits of using alternative fuel; and*
  - (C) *to contain a fuel tank cap that is clearly labeled to inform consumers that the automobile is capable of operating on alternative fuel.*
- (2) *The Secretary of Transportation shall collaborate with automobile retailers to develop voluntary methods for providing pro-*

*spective purchasers of automobiles with information regarding the benefits of using alternative fuel in automobiles, including—*

- (A) the renewable nature of alternative fuel; and*
- (B) the environmental benefits of using alternative fuel.*

\* \* \* \* \*

## **§ 32912. Civil penalties**

(a) **GENERAL PENALTY.**—A person that violates section 32911(a) of this title is liable to the United States Government for a civil penalty of not more than \$ 10,000 for each violation. A separate violation occurs for each day the violation continues.

(b) **PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY STANDARDS.**—Except as provided in subsection (c) of this section, a manufacturer that violates a standard prescribed for a model year under section 32902 of this title is liable to the Government for a civil penalty of \$5 multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

- (1) calculated under section 32904(a)(1)(A) or (B) of this title for automobiles to which the standard applies manufactured by the manufacturer during the model year;

- (2) multiplied by the number of those automobiles; and

- (3) reduced by the credits available to the manufacturer under section 32903 of this title for the model year.

(c) **HIGHER PENALTY AMOUNTS.**—(1)(A) The Secretary of Transportation shall prescribe by regulation a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under subsection (b) of this section, if the Secretary decides that the increase in the penalty—

- (i) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

- (ii) will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.

(B) The amount prescribed under subparagraph (A) of this paragraph may not be more than \$ 10 for each .1 of a mile a gallon.

(C) The Secretary may make a decision under subparagraph (A)(ii) of this paragraph only when the Secretary decides that it is likely that the increase in the penalty will not—

- (i) cause a significant increase in unemployment in a State or a region of a State;

- (ii) adversely affect competition; or

- (iii) cause a significant increase in automobile imports.

(D) A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.

(2) The Secretary shall publish in the Federal Register a proposed regulation under this subsection and a statement of the basis for the regulation and provide each manufacturer of automobiles a copy of the proposed regulation and the statement. The Secretary shall provide a period of at least 45 days for written public comments on the proposed regulation. The Secretary shall submit a copy of the proposed regulation to the Federal Trade Commission and request the Commission to comment on the proposed regula-

tion within that period. After that period, the Secretary shall give interested persons and the Commission an opportunity at a public hearing to present oral information, views, and arguments and to direct questions about disputed issues of material fact to—

(A) other interested persons making oral presentations;

(B) employees and contractors of the Government that made written comments or an oral presentation or participated in the development or consideration of the proposed regulation; and

(C) experts and consultants that provided information to a person that the person includes, or refers to, in an oral presentation.

(3) The Secretary may restrict the questions of an interested person and the Commission when the Secretary decides that the questions are duplicative or not likely to result in a timely and effective resolution of the issues. A transcript shall be kept of a public hearing under this subsection. A copy of the transcript and written comments shall be available to the public at the cost of reproduction.

(4) The Secretary shall publish a regulation prescribed under this subsection in the Federal Register with the decisions required under paragraph (1) of this subsection.

(5) An officer or employee of a department, agency, or instrumentality of the Government violates section 1905 of title 18 by disclosing, except in an in camera proceeding by the Secretary or a court, information—

(A) provided to the Secretary or the court during consideration or review of a regulation prescribed under this subsection; and

(B) decided by the Secretary to be confidential under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)).

(d) WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a penalty under this section by written notice.

(e) *USE OF CIVIL PENALTIES.*—*For fiscal year 2008 and each fiscal year thereafter, from the total amount deposited in the general fund of the Treasury during the preceding fiscal year from fines, penalties, and other funds obtained through enforcement actions conducted pursuant to this section (including funds obtained under consent decrees), the Secretary of the Treasury, subject to the availability of appropriations, shall—*

*(1) transfer 50 percent of such total amount to the account providing appropriations to the Secretary of Transportation for the administration of this chapter, which shall be used by the Secretary to carry out a program of research and development into fuel saving automotive technologies and to support rule-making under this chapter; and*

*(2) transfer 50 percent of such total amount to the Energy Security Fund established by section 118(a) of the Ten-in-Ten Fuel Economy Act.*

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### **[§ 32917. Standards for executive agency automobiles**

[(a) DEFINITION.—In this section, “executive agency” has the same meaning given that term in section 105 of title 5.



[(b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe regulations that require passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year to achieve a fleet average fuel economy (determined under paragraph (2) of this subsection) for that year of at least the greater of—

[(A) 18 miles a gallon; or

[(B) the applicable average fuel economy standard under section 32902(b) or (c) of this title for the model year that includes January 1 of that fiscal year.

[(2) Fleet average fuel economy is—

[(A) the total number of passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year (except automobiles designed for combat-related missions, law enforcement work, or emergency rescue work); divided by

[(B) the sum of the fractions obtained by dividing the number of automobiles of each model leased or bought by the fuel economy of that model.]]

**§ 32917. Standards for executive agency automobiles**

(a) *FUEL EFFICIENCY.*—The head of an Executive agency shall ensure that each new automobile procured by the Executive agency is as fuel efficient as practicable.

(b) *DEFINITIONS.*—In this section:

(1) *EXECUTIVE AGENCY.*—The term “Executive agency” has the meaning given that term in section 105 of title 5.

(2) *NEW AUTOMOBILE.*—The term “new automobile”, with respect to the fleet of automobiles of an executive agency, means an automobile that is leased for at least 60 consecutive days or bought, by or for the Executive agency, after September 30, 2008. The term does not include any vehicle designed for combat-related missions, law enforcement work, or emergency rescue work.